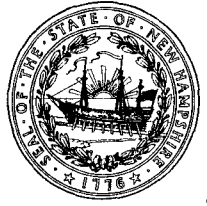




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

October 2, 2006

Jeffrey Caley
PO Box 501
Stratham, NH 03885

Re: Docket No. AF 06-008 - Administrative Fine by Consent Agreement

Dear Mr. Caley:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

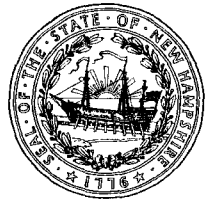
COPY

Michael P. Sclafani,
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Robert R. Scott, Director, Air Resources Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Jennifer J. Patterson, NH DOJ
Barbara Hoffman, DES ARD
Rick Berry, DES WMD
DES Public Information Officer
Greenland Town Administrator
W. Toland, EPA Region I



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Jeffrey Caley
P.O. Box 501
Stratham, NH 03885

Re: 792 Portsmouth Ave., Greenland, NH

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 06-008

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, and Jeffrey Caley, pursuant to RSA 141-E:16. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES") is a duly-constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, New Hampshire.
2. Jeffrey Caley is an individual, having a mailing address of P.O. Box 501, Stratham, NH 03885.

III. BACKGROUND

1. RSA 141-E authorizes DES to reduce the exposure of the public to asbestos fibers through rules adopted by the Commissioner relative to work practices and engineering control standards for asbestos abatement activities. Pursuant to this authority, the Commissioner has adopted NH Administrative Rules Env-A 1800, *Asbestos Management and Control*.
2. Pursuant to RSA 141-E:16, the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 141-E and rules adopted pursuant thereto, in accordance with RSA 125-C:15, I-b(b).
3. Env-A 1802.01(c) defines "asbestos" as it is defined in RSA 141-E:2, I, namely "amosite, chrysotile, crocidolite, or asbestiform tremolite, actinolite, or anthophyllite."
4. Env-A 1802.01(f), defines "Category I nonfriable ACM" by incorporating the definition of "Category I nonfriable asbestos-containing material (ACM)" from 40 CFR 61.141 as in effect on June 19, 1995, namely "asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy."

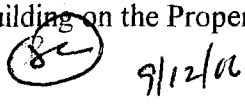
5. Env-A 1802.01(v)(3) defines "Regulated Asbestos-Containing Material (RACM)" as, *inter alia*, "Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading."

6. Env-A 1802.01(u) defines "owner or operator" as follows: "'Owner or operator' means 'owner or operator of a demolition or renovation activity' as defined in 40 CFR 61.141, namely 'any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.'"

7. Env-A 1803.03 requires each property owner or operator to provide written notification to DES and the city/town health officer, as applicable to the worksite location, in accordance with Env-A 1803.06, at least 10 working days before any demolition activity begins. This notification is required regardless of the amount of ACM, if any, contained in the facility.

8. Env-A 1805, *Work Practice Requirements*, sets forth the procedures for the proper removal and disposal of ACM. In particular, Env-A 1805.02 requires that the contractor and personnel involved in an asbestos abatement project be licensed and certified, respectively, Env-A 1805.07 requires that RACM be placed wet into water-tight containers for transport to an appropriate landfill, and Env-A 1805.09(b) requires that all RACM be removed from a structure in accordance with the applicable provisions of Env-A 1800 prior to the demolition of that structure.

9. On December 28, 2005, Mr. Lee Danley of Danley Demolition contacted DES to inquire whether a notification pursuant to Env-A 1803.03 had been filed for property located at 792 Portsmouth Avenue in Greenland, New Hampshire ("the Property"). DES had no record of such notification.

10. Mr. Danley said he had been contacted by Mr. Jeffrey Caley earlier in the year to provide an estimate for the demolition of a building on the Property. Mr. Danley asserted that he told Mr. Caley that the gray floor tile in the building on the Property probably contained asbestos, ~~and that an asbestos survey was required~~.  9/12/06

11. Mr. Danley stated that had a sample of floor tile from the building on the Property analyzed by ProScience Analytical Services. The results of the test, performed on May 31, 2005, show that the tile had a 5% asbestos content.

12. Mr. Danley reported that he did not hear from Mr. Caley again. Upon driving by the Property later in 2005, Mr. Danley noticed that the Building had been demolished.

13. On December 28, 2005, a DES inspector went to the Property and found an intact foundation that appeared to have had a structure removed from it. Demolition debris, in some places three feet high, was on the ground on two sides of the foundation.

14. Mr. Caley arrived at the Property during the DES inspection on December 28, 2005. He indicated to the DES inspector that he was developing the Property. He stated that he knew that there was vinyl asbestos tile in the structure when it was demolished. He stated that he did not think that asbestos in floor tile was a problem, ~~so a licensed asbestos abatement contractor was not hired to remove it and segregate it from the non-asbestos debris.~~ *And could be disposed thru construction dumpsters* (se) 9/12/06

15. A sample of gray floor tile taken by the DES inspector from the demolition debris at the Property was analyzed by Scott Lawson Group, Ltd., and found to contain 12% chrysotile asbestos.

16. It appears that all of the demolition debris has been removed from the Property and that, since the inspection on December 28, 2005, rubble from the foundation and fireplace has been buried on-site.

IV. ALLEGATIONS

1. Jeffrey Caley is the operator of the Property pursuant to Env-A 1802.01(u).
** Being his first experience with demo - (se) 9/12/06*
2. Jeffrey Caley violated Env-A 1803.03 by failing to provide written notification to DES at least 10 days prior to the demolition of the building on the Property. (se) 9/12/06
3. Jeffrey Caley violated Env-A 1805.02 by failing to hire a licensed asbestos abatement contractor to properly identify, handle, remove, and dispose of asbestos-containing materials in accordance with the provisions of Env-A 1800.
** (se) 9/12/06*
4. Jeffrey Caley violated Env-A 1805.09(b) by failing to remove all asbestos-containing materials prior to the demolition of the building on the Property.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. DES has determined the violation identified in Paragraph IV.2 above to be a major deviation from the requirements with a minor potential for harm, for which RSA 125-C:15, I-b(b) specifies a fine of between \$851 and \$1,500. Because Mr. Caley was aware that the floor tile in the building contained asbestos, DES proposes a fine of \$1,500 for this violation.

2. DES has determined the violation identified in Paragraph IV.3 above to be a major deviation from the requirements with a major potential for harm, for which RSA 125-C:15, I-b(b) specifies a fine of between \$1,501 and \$2,000. Because Mr. Caley was aware that the floor tile in the building contained asbestos, DES is seeking a fine of \$2,000 for this violation. ** Same (se) 9/12/06*

3. DES has determined the violation identified in Paragraph IV.4 above to be a major deviation from the requirements with moderate potential for harm, for which RSA 125-C:15, I-b(b) specifies a fine of between \$1,251 and \$1,750. Because Mr. Caley was aware that the floor tile in the building contained asbestos, DES is seeking a fine of \$1,750 for this violation. ** Same (se) 9/12/06*

4. Of the total fine in the amount of \$5,250, 10% or \$525 will be suspended based on Mr. Caley's cooperation with DES after the violation was discovered. The suspended portion of the proposed fines, in the amount of \$525 is contingent upon Mr. Caley maintaining compliance with RSA 141-E and Env-A 1800, for a period of one year from the date of execution of this document. If he fails to maintain compliance during the one-year period, the suspended portion of the proposed fines, in the amount of \$525, shall become due and payable immediately. If Jeffrey Caley maintains compliance for the prescribed period, the suspended portion of the fines shall be waived.

5. Jeffrey Caley agrees to pay the remaining portion of the proposed fines, in the amount of \$4,725 upon his execution of this agreement.

6. Payment in the amount of \$4,725 under Paragraph "V.5" and any payments that become due pursuant to Paragraph "V.4" shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

7. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

8. By executing this Administrative Fine by Consent, Jeffrey Caley waives his rights to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1, V.2 and V.3, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction. Other than such enforcement action, DES shall pursue no further administrative action against Jeffrey Caley relative to the allegations contained herein.

9. The effective date of this Administrative Fine by Consent will be the date on which it is signed by Jeffrey Caley, the Director of the Air Resources Division, and the Commissioner of DES.

10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

COPY

Jeffrey Caley, Property Operator

9/12/06

Date

Department of Environmental Services

COPY

Robert R. Scott, Director
Air Resources Division

9-28-06

Date

COPY

Michael P. Noll, Commissioner

09 29 06

Date

cc: Rick Berry, DES Waste Management Division
Public Information Officer, DES PIP Office
cc: Gretchen Hamel, DES Legal Unit Administrator
Beatrice Marconi, Greenland Town Administrator
W. Toland, EPA Region I